

08-CV-01286-APPR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT AND BEVERLY HARDIE, on  
behalf of themselves and others similarly  
situated,

Plaintiffs,

v.

COUNTRYWIDE HOME LOANS  
SERVICING, L.P.

Defendant.

Case No. 08-1286RSL

ORDER PRELIMINARILY  
APPROVING SETTLEMENT,  
PROVISIONALLY CERTIFYING  
CLASS FOR SETTLEMENT  
PURPOSES, AND SETTING  
REASONABLENESS HEARING

Upon consideration of the Parties' Settlement Agreement dated April 8, 2010 (the  
"Settlement Agreement") IT IS HEREBY ORDERED AS FOLLOWS:

1. The Settlement Agreement and the exhibits thereto are hereby incorporated by  
reference in this Order as if fully set forth herein. Capitalized terms in this Order shall, unless  
otherwise defined herein, have the same meaning as in the Settlement Agreement.

2. Solely for the purpose of settlement in accordance with the Settlement  
Agreement, and pursuant to Fed. R. Civ. P. 23(a) and (b)(3) of the Federal Rules of Civil  
Procedure, this Court hereby provisionally approves the following settlement class  
("Settlement Class"):

1 All persons who, during the period from July 27, 2002 to April 8, 2010,  
2 paid a Recording Fee and/or a Substitution Fee to Defendant in connection  
with a Loan secured by real property located in the State of Washington.

3 If, for any reason, the Settlement is not approved or does not become effective, this  
4 provisional approval shall be null and void, and shall not be used or referred to for any  
5 purpose in this Action or any other action or proceeding.

6 3. For settlement purposes only, and subject to further consideration at the Court  
7 Approval Hearing described in paragraph 12 below, the Settlement Class is provisionally  
8 found to meet the relevant requirements of Fed. R. Civ. P. 23(a) and (b)(3). In connection  
9 with the certification, the Court makes the following preliminary findings:

10 (a) Rule 23(a)(1) is satisfied because the Class appears to be so numerous  
11 that joinder of all members is impracticable;

12 (b) Rule 23(a)(2) is satisfied because there appear to be questions of law or  
13 fact common to the above-described Class;

14 (c) Rule 23(a)(3) is satisfied because the claims of the named plaintiffs  
15 appear to be typical of the claims being resolved through the proposed Settlement;

16 (d) Rule 23(a)(4) is satisfied because the proposed class representatives  
17 appear to be capable of fairly and adequately protecting the interests of the above-described  
18 Class in connection with the proposed Settlement and because Class Counsel appear to be  
19 qualified, competent and capable of prosecuting this action on behalf of the Class. Adequacy  
20 of representation therefore is satisfied.

21 (e) For purposes of determining whether the Settlement is fair, adequate  
22 and reasonable, the Court finds the requirements of Rule 23(b)(3) have been satisfied because  
23 common questions of law and fact appear to predominate over questions affecting only  
24 individual Class Members and because settlement with the above-described Plaintiff  
25 Settlement Class appears to be superior to other available methods for the fair and efficient  
26

1 resolution of the claims of the Class. Accordingly, the Class appears to be sufficiently  
2 cohesive to warrant adjudication through settlement by representation.

3 4. For settlement purposes only, and after considering the relevant factors in Fed.  
4 R. Civ. P. 23, Representative Plaintiffs are conditionally designated as representatives of the  
5 Settlement Class and Class Counsel are conditionally appointed as counsel for the Settlement  
6 Class. The law firms and attorneys conditionally representing the Settlement Class are:

7 Rob Williamson  
8 WILLIAMSON & WILLIAMS  
9 187 Parfitt Way S.W., Ste. 25  
Bainbridge Island, Washington 98110  
(206) 780-4447

10 Guy W. Beckett  
11 BERRY & BECKETT, PLLP  
12 1708 Bellevue Avenue  
Seattle, Washington 98122  
(206) 441-5444

13 5. Pursuant to Fed. R. Civ. P. 23, the terms of the Settlement Agreement, and the  
14 Settlement provided for therein, are preliminarily approved as (a) fair, reasonable, and  
15 adequate in light of the relevant factual, legal, practical and procedural considerations of the  
16 Action, (b) free of collusion to the detriment of Class Members, and (c) within the range of  
17 possible final judicial approval, subject to further consideration thereof at the Court Approval  
18 Hearing described at paragraph 12 of this Order. Accordingly, the Settlement Agreement and  
19 the Settlement are sufficient to warrant notice thereof, as set forth below, and a full hearing on  
20 the Settlement.

21 6. Pursuant to the terms of the Settlement Agreement, Defendant is hereby  
22 directed to prepare the Class Member List. Within forty-five (45) days of the date of this  
23 Order, and pursuant to the procedures detailed in the Settlement Agreement, Defendant shall  
24 cause the Settlement Administrator to provide notice of the Settlement and of the Court  
25 Approval Hearing to each Class Member on the Class Member List by mailing to the address  
26 for the Class Member on the Class Member List a copy of the Class Notice, substantially in

1 the form attached to the Settlement Agreement as Exhibit B, together with a copy of the  
2 Claim Form, substantially in the form attached to the Settlement Agreement as Exhibit C.  
3 Before mailing, the Settlement Administrator shall fill-in all applicable dates and deadlines in  
4 the Class Notice and Claim Form to confirm with the dates and deadlines specified for such  
5 events in this Order. The Settlement Administrator shall also have discretion to format the  
6 Class Notice and Claim Form in a reasonable manner before mailing to minimize mailing or  
7 administration costs.

8 7. If any Class Notice mailed pursuant to the Settlement Agreement and  
9 paragraph 6 above is returned by the United States Postal Service as undeliverable, then the  
10 Settlement Administrator shall re-mail the Class Notice, together with the Claim Form, to the  
11 forwarding address, if any, provided on the face of the returned mail. If the returned mail  
12 does not reflect a forwarding address, then the Settlement Administrator shall have no other  
13 obligation to re-mail the Class Notice and Claim Form, except as otherwise provided in the  
14 Settlement Agreement.

15 8. The Court finds that the Settlement Agreement's plan for class notice is the  
16 best notice practicable under the circumstances and satisfies the requirements of due process  
17 and Fed. R. Civ. P. 23. That plan is approved and accepted. This Court further finds that the  
18 Class Notice and Claim Form comply with Fed. R. Civ. P. 23 and are appropriate as part of  
19 the notice plan and the Settlement. Counsel should correct the typographical error that  
20 appears in Section D of the Class Notice, which refers to "Section below" without indicating a  
21 specific section. That provision should note that copies of the motion for attorney's fees will  
22 be available from Plaintiffs' Counsel as set forth in Section IX below. With that change, the  
23 Class Notice and Claim Form are hereby approved and adopted. This Court further finds that  
24 no other notice other than that identified in the Settlement Agreement is reasonably necessary  
25 in the Action.  
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1           9. Any Class Member who wishes to be excluded from the Settlement Class and  
2 not be bound by the Settlement Agreement must complete and mail or hand-deliver a request  
3 for exclusion ("Opt-Out") to the Settlement Administrator postmarked no later than  
4 **September 10, 2010**. For a Class Member's Opt-Out to be valid, it must be timely (as judged  
5 by the postmark deadline set forth above) and (a) state the Class Member's full name, address  
6 and telephone number; (b) contain the property address which secured the Loan as to which  
7 the Class Member seeks exclusion; (c) contain the Class Member's personal and original  
8 signature(s) or the original signature of a person previously authorized by law, such as a  
9 trustee, guardian, or person acting under power of attorney, to act on behalf of the Class  
10 Member with respect to a claim or right such as those in the Action (*i.e.*, conformed,  
11 reproduced, facsimile, or other non-original signatures are not valid); and (d) unequivocally  
12 state the Class Member's intent to be excluded from the Settlement Class, to be excluded  
13 from the Settlement, not to participate in the Settlement, and/or to waive all right to the  
14 benefits of the Settlement. In those cases where a Class Member includes persons who were  
15 obligors on the same Loan, the Class Member shall be deemed a Successful Opt-Out as to that  
16 Loan only if all obligors as to that Loan elect to and validly opt-out in accordance with this  
17 Order and the terms of the Agreement. Any Class Member who does not submit a timely  
18 Opt-Out, or otherwise comply with all requirements for opting out as are contained in this  
19 Order, the Agreement and the Class Notice, shall be bound by the Settlement Agreement,  
20 including the Release, as embodied in paragraphs 4.01 and 4.02 of the Settlement Agreement,  
21 and any Final Judgment entered in the Action. Further, any Class Member who is a  
22 Successful Opt-Out will be deemed to have waived any rights or benefits under the  
23 Settlement, and will not have standing to object to the Settlement.

24           10. As least five days before the Court Approval Hearing, Class Counsel, Counsel  
25 for the Defendant, and the Settlement Administrator shall create and file with the Court under  
26 seal a comprehensive list which will include full names and addresses of Successful Opt-Outs.

1 The list shall be maintained by this Court and the Clerk under seal in order to protect the  
2 privacy interests of those persons identified thereon.

3 11. Any Class Member who is not a Successful Opt-Out and who wishes to object  
4 to the Settlement, in whole or in part, must mail or hand-deliver a written objection to the  
5 Settlement or Settlement Agreement ("Objection") to the Court, and contemporaneously mail  
6 or hand-deliver it to Class Counsel and Counsel for the Defendant, no later than **September**  
7 **10, 2010**. To be considered valid, each Objection must be timely (as judged by the filing  
8 deadline set forth above) and (a) set forth the Class Member's full name, current address, and  
9 telephone number; (b) contain the address of the property that secured the Loan in connection  
10 with which a Recording Fee and/or Substitution Fee was paid by the Class Member; (c)  
11 contain the Class Member's personal and original signature(s) or the original signature of a  
12 person previously authorized by law, such as a trustee, guardian, or person acting under power  
13 of attorney, to act on behalf of the Class Member with respect to a claim or right such as those  
14 in the Action (*i.e.*, conformed, reproduced, facsimile, or other non-original signatures are not  
15 valid); (d) state that the Class Member objects to the Settlement, in whole or in part; (e) set  
16 forth a statement of the legal and factual basis for the Objection; and (f) provide copies of any  
17 evidence or documents that the Class Member wishes to submit in support of his/her  
18 objection(s). Any Class Member who does not submit a timely and valid Objection in  
19 complete accordance with this Order, the Class Notice and the Settlement Agreement may not  
20 be treated as having filed a valid Objection to the Settlement. Objections that are untimely  
21 and/or otherwise invalid may not be considered by this Court.

22 12. Within ten (10) business days of this Order, Defendant shall mail a copy of this  
23 Order to the appropriate officials as required by 28 U.S.C. § 1715(b). All filings, objections,  
24 statements, or other submissions by any party or government entity noticed pursuant to 28  
25 U.S.C. § 1715, or that claims an entitlement to have been noticed under 28 U.S.C. § 1715,  
26 shall be filed with the Court, and contemporaneously mailed or hand-delivered to Class

1 Counsel and Counsel for the Defendant, no later than 20 days before the date of the Court  
2 Approval Hearing.

3 13. A hearing (the "Court Approval Hearing") shall be held before the undersigned  
4 at **8:30 a.m. on September 30, 2010** in the United States District Court for the Western  
5 District of Washington, 700 Stewart Street, Courtroom 15106, Seattle, Washington, to  
6 determine, among other things, (a) whether the proposed Settlement should be approved as  
7 fair, reasonable and adequate, (b) whether the Action should be dismissed with prejudice  
8 pursuant to the terms of the Settlement Agreement, (c) whether Class Members should be  
9 bound by the Release set forth in the Settlement Agreement, (d) whether Class Members  
10 should be subject to a permanent injunction that, among other things, bars Class Members  
11 from filing, commencing, prosecuting, intervening in, or participating in (as class members or  
12 otherwise), any lawsuit, claim, demand or proceeding in any jurisdiction that is based on or  
13 related to, directly or indirectly, matters within the scope of the Release, (e) whether the  
14 Settlement Class should be finally certified, (f) the amount of attorneys' fees and costs to be  
15 awarded to Class Counsel, if any, and (g) the amount of the award to be awarded to Plaintiff  
16 for his service as class representative, if any. This hearing may be postponed, adjourned, or  
17 continued by order of the Court without further written notice to the Settlement Class.

18 14. Memoranda in support of the Settlement, applications for an Attorney Fee  
19 Award, applications for a Litigation Cost Award, and applications for a Representative  
20 Plaintiff Award to Representative Plaintiff shall be filed with the Court no later than seven (7)  
21 days before the Court Approval Hearing.

22 15. Any Class Member, as well as any party or government entity noticed pursuant  
23 to 28 U.S.C. § 1715 (or that claims an entitlement to have been noticed under 28 U.S.C. §  
24 1715), who wishes to appear at the Court Approval Hearing, whether *pro se* or through  
25 counsel, must file a notice of appearance in the Action, and contemporaneously mail or hand-  
26 deliver the notice to Class Counsel and Counsel for the Defendant, on or before **September**



1 **10, 2010.** No Class Member shall be permitted to raise matters at the Court Approval Hearing  
2 that the Class Member could have raised in an Objection, but failed to raise. Further, except  
3 by leave of Court, no party or government entity noticed pursuant to 28 U.S.C. § 1715 (or that  
4 claims an entitlement to have been noticed under 28 U.S.C. § 1715) shall be permitted to raise  
5 matters at the Court Approval Hearing that the party or government entity could have raised  
6 in a statement or other submission, but failed to raise.

7 16. Any Class Member who wishes to intervene in the Action must file with the  
8 Court, and contemporaneously mail or hand-deliver to Class Counsel and Counsel for the  
9 Defendant, an appropriate motion, together with all supporting documents, on or before  
10 **September 10, 2010.**

11 17. The postmark deadline for the submission of Valid Claim Forms shall be  
12 **November 15, 2010.** The validity of Claim Forms otherwise shall be governed by the terms  
13 stated in the Settlement Agreement.

14 18. All other events contemplated by the Settlement Agreement to occur after this  
15 Order and before the Court Approval Hearing shall be governed by the Settlement  
16 Agreement, to the extent not inconsistent herewith.

17 19. Defendant and Counsel for the Defendant are hereby authorized: (a) to  
18 establish the means necessary to administer the Settlement; and (b) to retain a settlement  
19 administrator to assist in effectuating the terms of, and administering, the Settlement. This  
20 Court hereby authorizes and appoints Tilghman & Co. to serve as Settlement Administrator in  
21 the Action as requested by the parties.

22 20. All proceedings in the Action, other than such as may be necessary to carry out  
23 the terms and conditions of the Settlement Agreement or the responsibilities related or  
24 incidental thereto, are stayed and suspended until further order of this Court.

25 21. If Final Approval of the Settlement is not achieved, or if the Settlement is  
26 terminated for any reason, the Settlement and all proceedings had in connection therewith



1 shall be without prejudice to the status quo ante rights of the parties to the Action, and all  
2 Orders issued pursuant to the Settlement may be vacated upon a motion or stipulation from  
3 the Parties. In such an event, the Settlement and all negotiations concerning it shall not be  
4 used or referred to in this Action for any purpose whatsoever. This Order shall be of no force  
5 or effect if Final Approval does not occur for any reason, and nothing in this Order shall be  
6 construed or used as an admission, concession, or declaration by or against Defendant, of any  
7 fault, wrongdoing, breach, or liability. Nor shall this Order be construed by or against  
8 Representative Plaintiff or the Class Members that their claims lack merit or that the relief  
9 requested in these Action is inappropriate, improper, or unavailable, or as a waiver by any  
10 Party of any defenses it may have. Nor shall this Order be construed or used to show that  
11 certification of one or more classes would or would not be appropriate if the Action were to  
12 be litigated rather than settled.


13 22. Neither the Settlement nor the Settlement Agreement constitutes an admission,  
14 concession, or indication by the Parties of the validity of any claims or defenses in the Action  
15 or of any wrongdoing, liability, or violation of law by the Defendant, which vigorously denies  
16 all of the claims and allegations raised in the Action.

17 23. The Court reserves the right to approve the Settlement with such  
18 modifications, if any, as may be agreed to by Class Counsel and Counsel for the Defendant  
19 and without future to notice to the Class Members.

20 24. Except as set forth in this Order and the Settlement Agreement, the Parties  
21 (and Plaintiffs' Counsel and Counsel for the Defendant) shall not issue or cause to be issued  
22 any public, mass, or generalized communications about the Settlement (other than disclosures  
23 required by law), whether by press release, advertisements, Internet postings, or any other  
24 means or media, without prior approval of the Court and/or the express written consent of the  
25 other Party.  
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1           25.    Plaintiffs' Counsel must submit a proposed Final Approval Order at least five  
2 days prior the Court Approval Hearing.

3  
4 DATED this 24<sup>th</sup> day of May, 2010.

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8 Robert S. Lasnik  
9 United States District Judge  
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